

Juridical Analysis of Guarantee on State Assets Business Assets by PT. ACSET Review Decision Number 760/Pk/Pdt/2016 (Case Study of PT.PLN (Persero) Assets by PT. ACSET)

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ABSTRACT

Based on Law Number 19 of 2003 concerning State Owned Enterprises Article 11 states that: "Against Persero all provisions and principles that apply to limited liability companies apply as stipulated in Act Number 1 of 1995 concerning Limited Liability Companies" Therefore the State Owned Enterprises in the form of Persero must comply with the Law of PT. But in the Case of Judicial Review Number : 760 / PK / PDT / 2016, PT. PLN (PERSERO) did not proceed accordingly, PT.PLN did not want to carry out the Court's Decision which has a permanent legal force because of differences in views with Law Number 1 of 2004 concerning State Treasury which states that: "Any party is prohibited confiscating state property "So that it creates legal problems that need to be further investigated, namely how is the Application of Law on Execution of Assets of State-Owned Enterprises in the event of a lawsuit from another party? And how is the application of Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises to the Assets of State-Owned Enterprises in the Decision of the Supreme Court Number: 760 / PK / PDT / 2016? The results showed, in Law Number 19 of 2003 concerning BUMN could not be implemented and could not provide legal certainty due to differences in views with Law Number 1 of 2004 concerning State Treasury. Law Number 19 of 2003 concerning BUMN Article 11 is considered not harmonizing with Law Number 1 of 2004 concerning State Treasury Article 50.

Keywords: *Confiscate collateral, Assets of state-owned enterprises, confiscate state asset*

1. INTRODUCTION

Indonesia is a developing country and therefore it is necessary to increase the power of all national economies both through related regulations and through certain business units with the aim of providing great benefits for the welfare of the people.) In Indonesia there are 3 business entities; 1) State-Owned Enterprises 2) Private-Owned Enterprises 3) Cooperatives. State Owned Enterprise (BUMN) is a Business Entity which partly or wholly of the capital comes from the State Assets through Direct Equity Participation with the separated State Assets, a Private Owned Enterprise is a Business Entity established and capitalized by a group of people, and a Cooperative is an Entity a business that stands on the basis of family principles. [1]

State-Owned Enterprises (BUMN) are formed from 3 companies Perjan, Perum, and Persero. Perjan is a State-Owned Enterprise whose all capital is owned by the government. Perum is a Perjan that has been changed. The goal is no longer of service oriented but have profit oriented. So Perum (Public Corporation) is a Business Entity whose entire capital is derived from state assets. Persero is a business entity, most of which is 51% of capital comes from state assets with the aim of seeking profit. This business entity was formed from the foundation of laws and regulations number 19 of 2003 concerning state-owned enterprises. As has been interpreted above regarding the meaning of BUMN itself, in carrying out its business, SOEs, Private Sector and Cooperatives carry out the role of supporting the Indonesian economy which is regulated in Article 33 of the NRI Constitution as constitutional duty for the nation's components. The intended business entity here is the state-owned enterprise which is largely owned by the state through direct equity participation from the separated

state assets. Therefore the objectives of this state company are adjusted to those mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia NRI focusing on service delivery. Based on the national economic system, they play a role in producing the goods and services needed in order to bring prosperity to the people. Their role is increasingly important as an inventor of the business sector which has not yet attracted private business.

The agency not only embodies prosperity to the community but acts as a public service provider, balancing large-scale private forces and contributing to the development of small businesses / coordination. BUMN is also a significant source of state revenue in various forms of taxation and privatization. The implementation of this role is manifested in business activities in all sectors of the economy, such as agriculture, fisheries, plantations, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and trade and construction. The need for the state to have a business entity to get investors.

The first character of BUMN is the separation of legal assets from the owners and management. Thus a corporation in the form of a company has a wealth which is separated from the wealth of the directors of the board of commissioners until the shareholders. In the SOE Law, article 4 states that actually the state assets are only derived from state assets that have been or have been no longer owned by the state. The eleventh article says that all companies must and must obey all rules and rules and norms that apply to or for a limited liability company, as regulated in Law Number 40 of 2007 concerning limited liability companies. BUMN is actually a form of legal entity or private business entity that does not have or is not entitled to have the authority to take care of various public or public services. The said state assets which become capital in the form of the company's shares and in general capital are no longer the property of state assets or state assets or state assets, but rather that what actually has actually happened is a significant change in status to become a property of the Agency the said business. So from that fact the above mentioned is actually the wealth of state or wealth originating from the state capital coming from the country both in the form of assets or public assets in the form of public companies as a legal entity is not state wealth. The origin of the word or term Execution has a significant meaning execution is derived from the word Executie which means to carry out the judge's decision or (ten uitvoerlegging van vonnissen). Execution referred to in the civil field has the meaning of carrying out the decisions of judges who have permanent legal force by force or forcing a court decision that has permanent legal force.

In another sense or meaning, execution in this civil field means to implement or execute a judge's decision in a civil case by force in accordance with existing regulations and apply because the executable party is unwilling and does not carry out voluntarily or does not want to carry out the judge's decision voluntarily without being forced therefore erupkan the obligations of parties who have been defeated in court .. So essentially the execution is a necessity or obligation of a losing defendant to meet the achievements

contained in the judge's decision. A judge's verdict that can be accepted or requested is actually an execution in the sense that there is or is included a decision whose sentence punishes or requests the punishment to be executed by the party that is executed or condemnatoir, because if the ruling of the ruling does not include the law desired by the party who sued then there is only a statement or declaratory can not be executed because it is only considered a statement and can not know the purpose and purpose of the law and therefore if such a thing happens then the execution can be fairly flawed and cannot be granted or the demand is fuzzy it can cause space the problem is that the defendant can sue again on the grounds that the demand is blurred or incorrect and perfect.

Therefore many cases that occur like this are due to lack of knowledge and lack of clarity in making an application or a lawsuit. This is often mentioned in a number of cases, namely execution or delay in execution. Based on practice in developing justice there are 2 interpretations of state wealth in SOEs or BUMDs. This usually leads to different interpretations as to whether their assets can be confiscated by the court or not. The first view, which is equalizing or a viewpoint that is seen correctly by someone that the status of BUMN or BUMD with a Limited Liability Company or another PT is the same. Therefore, if he looks at first sight, we can see that the assets or assets can be confiscated by the court. The Minister of Finance or the Minister of Finance of a government representative does not know that he cannot do or do derden verzet or can also be called resistance to third parties because what can be confiscated by the court is no longer or not something that belongs to and belongs to the state, but the owner is already mixed with assets. BUMN or BUMD at the time of capital participation is paid-up to this company-based business entity. As with the meaning that if a body is in the form of a state company, it is therefore considered as just ordinary human beings who have their own wealth, their own property and are separated separately. But there is a different view from the second view, the view or menrut the second view is to see the exact opposite, the judges here see the opposite that a state's assets cannot be confiscated because it is a possession or state property. Why? Because this is because the country in question here is investing in capital that comes from state or regional income expenditure budget funds. They are considered to use the provisions of Article 50 of the State Treasury Law as the legal basis. Not only that the judges also use a view on article 1 number 10 and 11 state treasury. Related to the case that I raise is PT. PLN or the state / state electricity company as a state-owned company violated PT. Indonusa as BUMS Therefore the losing party, PT.PLN / Persero must or must compensate PT. Acset Indonusa. But in this case, PT. PLN does not want to compensate PT. PT Indonusa even though the judge's verdict has stated that PT. PLN has compensated PT. PT Indonusa and carried out voluntary execution, and has provided an assistance to PT. PLN. PT PLN is not implementing, therefore the court is trying to confiscate assets that have been pledged during the trial, but because what is guaranteed by PT PLN is PLN building, the Bailiff cannot confiscate it due to a law on the state treasury which states that state assets are not can be

confiscated. But while Article 11 of the Law on State-Owned States states that BUMN in the form of state-owned companies must submit to the laws of the company and this PT law requires that assets that have been deposited to the state-owned state no longer belong to the state because it can be seen that only capital participation is paid to the state-owned company. in a state-owned company, the status is not state-owned but rather belongs to the state-owned company and can be tried in court as generally as possible and collateral is taken because Considering Article 1131 Kuhper which states that all material things are in debt, both movable and immovable, both existing and new there in the future, become dependents for all individual engagement. This is called a general guarantee. The review decision number 760 / PK / PDT / 201 is rejecting the request for reconsideration from the applicant for reconsideration of the Indonesian republic government, cq. Ministry of State Owned Enterprises cg. PT the state electricity company (Persero). The second one sentenced the petitioner to reconsider the petitioner or defendant or comparator for this review examination in the amount of Rp. 2,500,000.00 or two million to pay the court fee in five hundred rupiahs. On the basis of that, what makes the writer interested in making a legal writing related to the problem with the title "JURIDICAL ANALYSIS OF SITA GUARANTEE ON ASSETS OF STATE-OWNED BUSINESS ENTITIES BASED ON DECISION DECISION NUMBER 760 / PK / PDT / 2016 (CASE STUDY OF PT PLN PERSET'S ASSETS) PT.ACSET) "

Based on the background description above, the problems that form the basis of this legal research can be formulated as follows:

1. How is the Legal Application of the Execution of Assets of State-Owned Enterprises in the event of a lawsuit from another party?
2. How is the application of Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises to the Assets of State-Owned Enterprises in the Decision of the Supreme Court Number: 760 / PK / PDT / 2016?

2. ANALYSIS

2.1. Legal Status and Assets of State-Owned Enterprises and Implementation of Execution Laws of State-Owned Enterprises.

In Indonesia there are found two forms or types of state-owned enterprises, the first being a State-Owned Enterprise in the form of a Persero and the second is a State-Owned Enterprise in the form of Public Corporation. Both are explained in detail and in detail in Law number 19 of 2003 concerning state-owned enterprises. The Persero, which is hereinafter referred to as Perseroo, is a BUMN in the form of a limited liability company or PT whose capital is divided into shares, wholly or at least 51% of its shares are owned by the Indonesian republic, whose main purpose is to seek profits. Whereas Perum is a state-owned enterprise which is

always owned by the state and is not divided or is intended only to provide public services.

Regarding the above, we can see that BBUMN is a legal entity that has the right and an obligation to do and do something like what is done by humans in general, for example, like having one's own wealth and can be sued and sued in the courts. This can be found in the theory because they are in harmony which states that a body is a thing that is considered abstract but its actions in the legal body are considered appropriate like a normal human being whose assets are in the form of each.

Then the body was born because of the birth of a legal legislation, that is, the interests or interests of a particular group of people who aim to carry out or make an activity separate from personal or individual interests. Then we need an acknowledgment from another party that has power over the existence of a legal entity that is a government itself. Public Corporation which is considered as a body gets recognition of its existence, namely the issuance / promulgation of government regulations regarding its establishment. Meanwhile, the form of a company is obtained by the status of the Menhumkam. Make based on the criteria and the legal entity baseline, both of them meet the criteria to become a legal entity.

Looking at its position and status, we can review it from the side of the original capital or the beginning of the capital owned by the company. This is related to business. The initial or initial capital owned by the SOE is also included in the form of the company itself derived from its own wealth which is separated. Other than the shares that can be sourced from individuals or private corporations, so can also be sourced from the government. Regarding this matter, it is regulated in 24 paragraph 1 number 17 of 2003 concerning state finances which states that a hub between the government and state-owned companies, regional companies, private companies, and community fund management bodies is stipulated for the government to or can provide its loans or grants or the capital investment to the recipient of the loan is a grant from a state company after obtaining approval from the DPR or DPRD.

Furthermore, explaining that the SOE capital originating from the government originates from the state budget funds or the state expenditure budget. Separated assets means that assets which are not separated into assets that are separated from the APBN funds to be used as state capital participation in state-owned or publicly owned companies as well as other limited liability companies. and divided into shares after the company issued shares to shareholders. Whereas Perum yadalah state capital that is included is no longer divided into shares and even wholly owned by the state.

Then the asset is contacted by the management of state finances based on the sound of Article 23 of the 1945 Constitution of the Republic of Indonesia No. 945 which has a narrow meaning, only concerning the budget of the State Expenditure Budget. However, it can be read if it is more in-depth and is related to the provisions of Article 23C of the 1945 Constitution of the Republic of Indonesia No. 945 which states that it is regulated by law. provide meaning that state finances are not only PrivatLaw Vol.V

No.1 January-Juni 2017 127. This difference is caused because there is a view or perspective of the Law which according to consideration of the contents of the Constitutional Court's decision does not exist.

It was explained that state assets that were separated in state / regional companies did not transfer status after the capital separation transaction, because the transaction only facilitated the management of state finances that were separated separately. Then another consideration is because the separated state assets are an extension of the state, there is a reason for saving state finances, where the state through the existing regulatory mechanism has surrendered state assets to be used as BUMN BUMN's business capital so that the state needs to supervise capital both tangible or intangible objects. so that there is no misuse of state wealth in the form of capital it only becomes a profit from the private organ of the state company so that what is mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia is achieved, namely the national economy and social welfare of the people.

So from the explanation above, the two legal regimes apply to SOEs, however, the State Financial legal regime only applies to SOEs which are limited to SOEs' capital and existence. For example, in the SOE Law it is regulated that the establishment, merger, consolidation, acquisition, capital changes, privatization and dissolution of SOEs are determined by Government Regulation, and even in the process involving Technical Ministers, Ministers of Finance, Presidents and the DPR. Whereas operational actions (excluding the capital and existence of BUMN), are fully subject to the corporate legal regime.

General confiscation of the assets of bankrupt debtors which is another meaning of bankruptcy has legal consequences, as explained in Article 24 of Act Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU) and Suspension of Debt Payment Obligations (KPKPU) explaining the results of the statement bankruptcy is a debtor by law losing his right to control and manage the assets included in bankruptcy assets, from the date the declaration of the bankruptcy statement was declared. Then explained also in the provisions of Article 1131 of the Civil Code states that all debtors' assets, both movable and immovable, both existing and new will be in the future become the responsibility of all debtors' debts (Sutan Remi Sjahdheini, 2002: 197).

While BUMN Persero in Article 11 of Act Number 19 of 2003 concerning State-Owned Enterprises states that "With regard to all applicable provisions and principles applicable to limited liability companies as regulated in Law Number 1 of 1995 concerning the Company, all principles apply the principles of a Limited Liability Company include bankruptcy, which is like a private company in general. BUMN both in the form of Public Corporation and Limited Corporation are connected with the Law on State Finance, so the two forms of SOE assets are part of state finance.

So that with Law Number 1 of 2004 concerning the State Treasury, SOE assets in the form of Public Corporation and Limited Corporation cannot be confiscated. The implementation of a general confiscation of SOEs in the form of Public Corporation if it is approved by the Minister

of Finance, the procedure is like ordinary bankruptcy, but what distinguishes it from private companies is that Perum BUMN assets are all state-owned, special regulations regarding the transfer of state assets to other parties are stipulated in Minister of Finance Regulation No. 50 / PMK.06 / 2014 concerning the Elimination of State Property. While BUMN Persero is divided into shares and has private elements as well as in Article 11 of Law Number 19 of 2003 concerning State Owned Enterprises which states that for the Company the principles of the Limited Liability Company apply to the Limited Liability Company Law.

Therefore BUMN Persero's ownership is similar to that of private companies in general, that is, without prior approval from the Minister of Finance. Therefore, it can be seen from the status of BUMN in the form of state-owned companies that clearly states that assets are separated from the state because the investment capital that has been deposited to BUMN The Persero will then become the assets of the state-owned companies and no longer state property. So this state-owned company has clearly had to submit to the laws of PT. Likewise, the application of the law must also be subject to the laws of the PT and can be enforced like general court proceedings.

2.2 Application of Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises for Assets of State-Owned Enterprises in the Decision of the Supreme Court Number: 760 / PK / PDT / 2016

The application of the contents of article 11 of Law number 19 of 2003 reads: "All the provisions and principles that apply to limited liability companies apply to Limited Liability Companies as stipulated in Act Number 1 of 1995 concerning Limited Liability Companies. "This article explains the status of a State-Owned Enterprise in the form of a state-owned company, legally incorporated as a Limited Liability Company and no longer applicable to the Law on State-Owned Enterprises. So if there is a lawsuit from another party to a state-owned corporation in the form of a company, then the law applies to limited liability companies.

Before further discussing the execution of the bankrupt state-owned enterprise ("BUMN") assets, it is necessary to first understand the forms of SOEs themselves. Article 9 ("SOE Law"), states that SOEs have two forms, namely the Company Company ("Persero") and the Public Company ("Perum"). Regarding SOE bankruptcy, Article 2 paragraph (5) of Law 37/2004 reads: In the event that the Debtor is an Insurance Company, a Reinsurance Company, Pension Funds, or State-Owned Enterprises engaged in the public interest sector, requests for bankruptcy statements can only be submitted by the Minister of Finance. The contents of Article 2 paragraph (5) of Law 37/2004 cannot be separated from the explanation, which clearly explains that what is meant by "BUMN engaged in the public interest" is BUMN which is wholly owned by the state and not divided into

shares. The type of BUMN referred to is the Public Corporation. This refers to the definition of Perum in Article 1 number 4 of the SOE Law, which reads: Public Corporation, hereinafter referred to as Perum, is a SOE whose capital is wholly owned by the state and not divided into shares, aimed at public benefits in the form of the supply of goods and / or services which is of high quality and at the same time pursues profit based on the principles of company management. As for BUMNs whose capital is "divided into shares", Article 2 paragraph (1) of Law 37/2004 applies, which reads: Debtors who have two or more Creditors and do not pay off at least one debt that is past due and collectible, is declared bankrupt by a court decision, both at its own request and at the request of one or more of its creditors.

Therefore, a request for bankruptcy to a state-owned company may be submitted by the creditor or the debtor itself and must not be submitted by the Minister of Finance. This is because the company has a philosophy as a legal entity that is identical to a Limited Liability Company (PT) which is an independent legal person who explicitly has a separation in the exercise of the rights and obligations of each individual shareholder or its management (separate entity, separate liability). Execution of BUMN assets, both in the form of Persero and Perum which have been declared bankrupt, are still subject to Law 37/2004. In this context, the *lex specialis derogat legi generalis* principle applies as the benchmark for the execution of the BUMN asset. BagirManan in his Indonesian Positive Law as quoted in an article written by A.A.Oka Mahendra explained that the principle of *lex specialis derogat legi generalis* implies that special legal rules would override general legal rules. There are several principles that must be considered in this principle, namely:

- a. The provisions found in the rules of general law still apply, except those specifically regulated in these special legal rules.
- b. The provisions of the *lex specialis* must be equal to the provisions of the *lex generalis* (statute with statute).
- c. The provisions of the *lex specialis* must be in the same legal (regime) environment as the *lex generalis*. The Commercial Law Law and the Civil Law Law are both included in the civil legal environment.

Finally, according to the opinion of the author, in the event that SOE has been declared bankrupt, both the management and acquisition of bankrupt assets still refer to the provisions stipulated in Law 37/2004

In essence, Execution for BUMN Persero continues to run in accordance with article 11. Its assets can also be confiscated as in the case of state-owned companies in court in general, their assets which are placed as collateral when requested by the court can certainly be confiscated and can be forcibly executed. So the clerk must order the bailiff to immediately execute the bail by force. But if the bailiff cannot carry out or carry out his obligations properly, PT. Acet can provide a letter to the Supreme Court requesting instructions for the confiscation of the asset. This case cannot be ignored because there are already many other private entities that are often disadvantaged by the state, because just from the state it does not mean that they can

hide behind the state. If it has been lost before the court, it must be responsible for carrying out the execution voluntarily in order to provide legal certainty to the injured party. If Article 11 is not properly implemented, this will also diminish the confidence of other business entities to cooperate with the state, thus weakening foreign investors who want to invest in our country because many cases like this are unresolved. If the investor knows there is an incident like this it will also harm the state in cooperation, because investors will still look around first if a company is included in a qualification that can be safely placed or not, the state must be more concerned with things like this because This will also help the country's economy to improve and get state revenue so that we become a country that can be obtained by foreign investors.

3. CONCLUSION

Based on the overall analysis of the subject matter described in the previous chapter, the writer can draw the conclusion that:

1. With this State-Owned Enterprise in the form of a state-owned company not fulfilling its obligations in carrying out the judges' decision voluntarily, it causes legal problems. First, if a State-Owned Enterprise in the form of a state-owned company does not implement the judge's decision voluntarily, it will cause losses to the party that wins the case. This occurs because there are two legal differences between: Article 4 Paragraph (1) of Law Number 19 of 2003 concerning Business Entities State Owned by Law Number 1 of 2004 concerning State Treasury which states that "Any party is prohibited from confiscating state goods that make the state milk business entity unwilling to implement the decision of a judge who has permanent legal force, views on both This law makes the view of this state-owned enterprise not willing to implement the decision voluntarily because it adheres to the state treasury law which states that all state assets cannot be confiscated. Second, because there are 2 different views, it causes legal uncertainty for the party who wins the case, legal uncertainty not only causes losses to state-owned enterprises but the public sees that the law cannot provide certainty and the community will judge that the government cannot carry out its duties with well.
2. In the Decision of the Supreme Court Number: 760 / PK / PDT / 2016 State-Owned Enterprises

here must submit to Law No. 19 of 2003 concerning State-Owned Enterprises which states that state-owned companies must submit to this PT law. it is stated in the law of section 11 that all state-owned enterprises in the form of state-owned companies must comply with the law of PT No. 40 of 2007. So the applicable law is subject to PT law, the sanctions imposed in court also apply to the Law of PT.

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